

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THOMAS M. ROLAND, III,

Plaintiff,

v.

Civil Action No.
9:10-cv-89 (GLS/DEP)

FRANK WENZ, T.A.,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

THOMAS M. ROLAND, III
Plaintiff, *Pro Se*
04-B-2754
Wende Correctional Facility
P.O. Box 1187
Alden, New York 14004

FOR THE DEFENDANT:

HON. ANDREW M. CUOMO
Attorney General of the
State of New York
The Capitol
Albany, New York 12224

ROGER W. KINSEY, ESQ.
Assistant Attorney General

GARY L. SHARPE,
U.S. DISTRICT JUDGE

ORDER

The above-captioned matter comes to this court following a Report-Recommendation by Magistrate Judge David E. Peebles, duly filed June 3, 2010. Following ten days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Magistrate Judge's Report-Recommendation for clear error, it is hereby

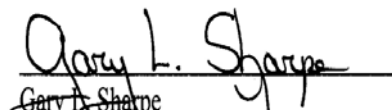
ORDERED, that the Report-Recommendation of Magistrate Judge David E. Peebles filed June 3, 2010 (Dkt. No. 20) is ACCEPTED in its entirety for the reasons state therein, and it is further

ORDERED, that the defendant's motion to dismiss plaintiff's complaint pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure (Dkt. No. 13) is DENIED, without prejudice; and it is further

ORDERED, that the Clerk of the court serve a copy of this order upon the parties in accordance with this court's local rules.

IT IS SO ORDERED.

Dated: July 16, 2010
Albany, New York


Gary L. Sharpe
U.S. District Judge